IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 136 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

P D MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR JT TRIVEDI for Petitioner

MT ST MEHTA ADDL PP for Respondent No. 1

MR KG PANDIT for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 25/02/2000

ORAL JUDGEMENT

This application is filed by the Chief Manager of Bank of India (Navrangpura Branch, Ahmedabad) with a prayer to quash the order dated 4.6.1990 passed in Criminal Case No.1045 of 1990 pending in the Court of the

learned Metropolitan Magistrate, 9th Court, Ahmedabad. The impugned order is passed for issuing summons to the accused for the offences alleged in the complaint.

2. It will be necessary to refer to some relevant and important facts in order to appreciate the effect of the impugned order. The original complainant is the divorcee-wife of the accused No.1. It is alleged by her that the ornaments (stridhan), which were lying in the locker, were taken away by her ex husband and his brother by producing a letter before the bank on which her signature was forged. It is alleged in the complaint that the bank manager had acted in complicity and collusion in so far as the signature on the letter purporting to bear her signature was not properly verified and matched with the signature which was already on the records of the bank. It is required to be noted that no particular person is made a party in the complaint by name as far as the bank is concerned and only "Manager" (by designation) of the bank is joined as accused No.2. The original complainant, who is respondent No.2 herein, has not filed any reply affidavit. However, appearing on her behalf, it is contended by the learned advocate Mr.K.G.Pandit that in the facts and circumstances, the petitioner could have approached the trial court with an application for discharging him if at all the averments made in the application were correct. Secondly, it is submitted that the powers of this court under Section 482 of the Code of Criminal Procedure ought to be sparingly used and the criminal proceedings ought not to be quashed merely on the ground that the then bank manager is not joined as an accused person by name.

3. It appears that the present applicant, who is not an accused person in the original complaint by name, has filed the present application because of the fact that at the relevant time he was the Branch Manager of the Bank. It is stated by him that according to the instructions with regard to the locker in question, it could be operated by either of the spouses or survivor. It is admitted that the original accused No.1, the ex husband of the complainant, had approached the bank on 9.9.1989 with a request to drill open the locker as the key of the said locker was lost. At that time, a letter purportedly written by the complainant was produced and the Officer in charge of the safe deposit vaults having no reason to doubt the genuineness of the letter and the signature thereon, had permitted the locker to be drilled opened on 11.9.1999. It is nowhere contended that either the manager of the bank or the officer in charge of the

lockers had the knowledge of the fact that the relations between the complainant and the accused No.1 had been strained culminating into divorce. It is contended on behalf of the applicant that without any specific allegations about the offence committed or the role played by any particular officer of the bank, the manager has been implicated only with a view to pressurise the accused No.1 and hence it is a case of abuse of the process of law without making out any case in the complaint against the present applicant.

4. Considering the rival contentions and going through the uncontroverted averments of the applicants as well as the contents of the complaint, it appears that no specific allegation against a particular officer of the bank, even by designation, are made out in the complaint except that the ornaments were taken away by the ex-husband in collusion with his brother and the officer of the bank. It is difficult to concede to the argument that even if due care was not taken by any officer of the bank in allowing the locker to be drilled opened, the manager can be charged with the offences under Sections 467, 468, 471 and 420 of the Indian Penal Code.

5. The learned Metropolitan Magistrate was required to apply his mind and form an opinion about the sufficient ground for proceeding after taking cognizance of the offence and proceeding to issue summons in view of the scheme and language of Sections 202, 203 and 204 of the Code of Criminal Procedure. Here in the facts of the present case, the summons appears to have been ordered to be issued without application of mind as far as the present applicant is concerned. As observed by the Apex Court in K.M.MATHEW v. STATE OF KERALA (AIR 1992 SC 2206), the need to try the accused arises when there is an allegation in the complaint that the accused has committed a crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate had no jurisdiction to proceed against the accused. In this case, except a vague allegation of collusion, no specific allegation of any particular act by a particular person is made out and hence the process issued against the present applicant are required to be quashed in the interest of justice.

6. In the result, this application is allowed and the process and proceedings initiated against the present applicant in Criminal Case No.1045/90 before the learned Metropolitan Magistrate, 9th Court, Ahmedabad are quashed. Rule is made absolute with no order as to

costs.

(KMG Thilake)
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